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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,188

12/12/2003

Georgios Stamatas

J&J-5092

2589

27777 7590 04/13/2009  
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EXAMINER

CHENG, JACQUELINE

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

04/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,188	<b>Applicant(s)</b> STAMATAS ET AL.	
	<b>Examiner</b> JACQUELINE CHENG	<b>Art Unit</b> 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 2, 2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed March 2, 2009 have been fully considered but they are not persuasive. The examiner respectfully disagrees with the applicant's arguments that using the claimed wavelength ranges of about 295 and about 390-410 is not obvious. The invention of Leffell (US 4,894,547) is directed at wavelengths in the ultraviolet range (col. 2 line 15-18) so it would therefore be obvious to use any wavelengths that are in the ultraviolet range such as wavelengths 295 nm and 390-410 nm. Furthermore since it has been held that where the general conditions of a claim (wavelengths in the ultraviolet range) are disclosed in the prior art, discovering the optimum or workable ranges (295 nm and 390-410 nm) involve only routine skill in the art (In re Aller, 105 USPQ 233). If these ranges are used it would furthermore be obvious that the fluorescent emission intensity that is measured be at approximately 340 nm and 440 nm as it is well known in the art that light in the 295 nm range causes the skin to fluoresce at approximately 345 nm (col. 9, paragraph 0057 lines 21-26 of Trepagnier, 2002/0016534) and

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light in the about 370 nm range causes the skin to fluoresce at approximately 420-520 nm (col. 10, paragraph 0057 line 27-32 of Trepagnier, 2002/0016534).

3. It is for these reasons that the examiner believes the rejection dated May 29, 2008 still stands and is repeated below.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leffell (US 4,894,547). Leffell discloses a method and apparatus for inducing fluorescence in human skin for evaluating certain skin characteristics. Light in two different predetermined ultraviolet wavelength ranges are directed at sun-exposed skin such as the forehead (skin having undergone treatment). A ratio of the measured fluorescent intensity that is induced from each wavelength is then formed. This ratio is then compared to a ratio of the fluorescent intensity that is induced from two wavelengths that are directed at non-sun-exposed skin such as the buttocks (skin not exposed to the treatment). By comparing the ratios one can determine the effect of the sun has on the skin (col. 2 line 15-20, col. 2 line 53-68, col. 4 line 56-60). Although Leffell does not explicitly disclose the two fluorescent emissions being about 295 nm and about 390 nm to 410

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nm, Leffell does disclose using any two wavelength ranges within the ultraviolet range. As these ranges fall within the ultraviolet range, it would be obvious to use 295 nm and about 390-410 nm. Leffell also does not explicitly disclose measuring the intensity of about 340 nm and about 440 nm. However it is well known in the art that directing light in the 295 nm range towards the skin causes the skin to fluoresce at approximately 345 nm, and that directing light in the about 370 nm range causes the skin to fluoresce at approximately 420-520 nm (see col. 9 line 4-10 and col. 10 line 29-33 of US 2002/0016534 to Trepagnier), therefore if the fluorescent emissions of about 295 nm and about 390-410 nm were used it would be obvious to measure at intensities of about 340 nm and 440 nm.

6. Although the main embodiment of Leffell is drawn to comparing sun-exposed skin to non-sun exposed skin, Leffell also discloses that his invention can be used to monitor improvement in skin relating to treatment (col. 9 line 15-25). In order to monitor improvement in skin it would be obvious that one must monitor the same area in order to be able to tell how the skin improves over time.

### ***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114.

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See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE CHENG whose telephone number is (571)272-5596. The examiner can normally be reached on M-F 10:00-6:30.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

/Long V Le/  
Supervisory Patent Examiner, Art Unit 3768